Individual disputes at the workplace: Alternative disputes resolution

Executive summary

Introduction

Alternative disputes resolution (ADR) refers to a range of measures used to try to resolve individual workplace disputes before they go to a full court hearing. This can be done by using conciliation, mediation and arbitration practices, which are instigated by third parties experienced in these areas. ADR can be further distinguished according to ‘judicial’ and ‘non-judicial’ forms of resolution. Judicial ADR involves action by a legal authority, often a court judge, immediately before a hearing in an effort to resolve the dispute. It can also be provided by publicly-funded specialists or private experts either once an application for a court hearing has been made but before the hearing takes place, or before a claim has been made. Non-judicial ADR, on the other hand, is where the social partners engage in joint efforts to try to resolve a dispute – either at the workplace, sectoral or regional level – using negotiation, problem-solving and/or grievance or disciplinary procedures. While the types and extent of ADR practices vary from country to country across Europe, a common objective of ADR in all its guises is to resolve the matter in hand as soon as possible. In general, the earlier the matter is dealt with, the easier it will be to resolve and the less costly will be the process.

Policy context

All countries in the European Union (with the possible exception of France for which no data were forthcoming for the present study) allow for individual worker disputes concerning alleged breaches of employment law to be heard in a court of justice – whether a specialist labour court or a civil court. Increasingly, however, ADR is being used to prevent such disputes from going to court. As the use of ADR is growing across Europe, this timely report examines the phenomenon more closely, looking at trends in ADR usage across countries, the different types of ADR and the service providers, along with the views of the social partners towards ADR. Given the different forms and combinations of ADR practices, it is a complex area, which should be seen in the context of different traditions in employment relations within each country. At the same time, these employment relations should be viewed against the wider canvas of the historical development of the institutions of industrial and employment relations over many decades.

Key findings

Trends in ADR
The extent to which ADR is used to resolve individual disputes differs considerably across the EU. A total of 10 EU Member States along with Norway show a medium to high usage of ADR, while 16 Member States record a low level of usage. Among the countries with low usage, many of which are new Member States (NMS), the correct framework for such activities may not yet be developed. Alternatively, where such procedures do exist, there may be a reluctance to use them, as seen in the case of Poland, where employees and employers seem unwilling to trust methods outside court proceedings.

It is difficult to provide a complete picture of the prevailing trends in ADR growth, due to the lack of data. Nonetheless, of the countries where trends are observable, the majority report growing use of ADR – in some cases, substantially so, as seen in Malta. Only Cyprus reports a decline in ADR use.

Regarding the application of ADR, it is often used in disputes involving breaches of employment rights, in particular the non-payment of wages or holiday pay, the termination of employment contracts, or allegations of unfair dismissal. Moreover, a small number of countries have special procedures in place for equality-related issues.
In relation to the success of ADR, an optimistic estimate is that judicial ADR leads to a reduction in the number of labour court or tribunal hearings in about two thirds of applications. Data on the success of non-judicial ADR are not available, although the low number of labour court cases in countries such as Sweden may point to its growing success.

**Types of ADR in use**
The types of ADR used differ across the various countries. Conciliation procedures – that is, where a third party acts only as a facilitator to ensure a two-way flow of communication between the conflicting parties – are evident in seven countries. Mediation – where a third party helps two or more people in dispute to reach an agreement – is growing in use, with some 19 countries having such arrangements in place. Arbitration – where a third party makes a binding decision – is used in 14 countries. However, this form of ADR is generally adopted as a last resort, with greater attention usually given to the earlier stages of conciliation and mediation.

Some countries use labour inspectors to provide forms of ADR: in Greece, for instance, local labour inspectors convene three-party meetings between the inspector, employee and employer when individual disputes arise. Elsewhere, the social partners play a significant role in ADR provision: in Austria, for example, ADR is well established through the trade unions’ activities and especially through the Chamber of Labour (Arbeiterkammer, AK).

**ADR service providers**
ADR service providers encompass a wide range of professionals. Where ADR is provided by the state, the ADR experts generally tend to be civil servants, including labour inspectors or court judges. Nevertheless, the growth of mediation in other areas besides labour matters, such as family and commercial issues, has led to the establishment of specialist centres in recent years. Moreover, a growing number of independent experts, operating as private individuals unconnected to any centre or central list, have started to emerge, as evidenced in at least 10 countries. In countries with a strong emphasis on non-judicial ADR, those involved can include managers, employer organisations, employee representatives or trade union officials.

**Policy pointers**
- ADR may be more suited to certain types of individual worker disputes – in particular, more ambiguous, complex and multi-faceted disputes, for example those concerning unfair dismissal, discrimination or bullying. More concrete disputes involving employer breaches – for instance, the non-payment of wages – tend to be less amenable to ADR.
- ADR can play an educational as well as quasi-judicial role. For example, in cases where ADR fails to resolve a dispute, the act of discussion with a third party can nevertheless lead a party to back down as they have a more realistic view of the situation and possible outcome.
- The growing development of mediation as a private practice raises questions over the need for entry or qualification standards, proper training, and some form of good practice protocol.
- Arbitration seems to be one of the least popular forms of ADR due to the fact that it can be inflexible and has little advantage over court hearings, except possibly in terms of speed.
- Favourable reports indicate that ADR has the potential to significantly reduce public costs as well as the time taken to deal with a dispute compared with lengthy court cases.

**Further information**
The Eurofound report on Individual disputes at the workplace: Alternative disputes resolution is available online at: http://www.eurofound.europa.eu/eiro/studies/tn0910039s/tn0910039s.htm.
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